

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TAL PROPERTIES OF POMONA, LLC,

Civil Action No.: X

Plaintiff(s),

-against-

VILLAGE OF POMONA, DORIS F. ULMAN, Individually and as Attorney for the Village of Pomona, BRETT YAGEL, Individually and as Mayor of the Village of Pomona, LEON HARRIS, Individually and as Deputy Mayor of the Village of Pomona, IAN BANKS, as Trustee of the Village of Pomona, ALMA SANDERS ROMAN, as Trustee of the Village of Pomona, NICHOLAS WILSON, as Trustee of the Village of Pomona, LOUIS ZUMMO, as Building Inspector of the Village of Pomona, and P. JOSEPH CORLESS,

Defendant(s).

NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Defendants-Petitioners, VILLAGE OF POMONA, DORIS F. ULMAN, Individually and as Attorney for the Village of Pomona, BRETT YAGEL, Individually and as Mayor of the Village of Pomona, LEON HARRIS, Individually and as Deputy Mayor of the Village of Pomona, IAN BANKS, as Trustee of the Village of Pomona, ALMA SANDERS ROMAN, as Trustee of the Village of Pomona, NICHOLAS WILSON, as Trustee of the Village of Pomona, LOUIS ZUMMO, as Building Inspector of the Village of Pomona, and P. JOSEPH CORLESS file this notice to remove the foregoing case to the United States District Court for the Southern District of New York, New York division, and respectfully show this Court:

1. A civil action was commenced in the Supreme Court of the State of New York, County of Rockland in which the above-named entity, TAL PROPERTIES OF POMONA, LLC

is the plaintiff and the petitioners are the defendants. The action is entitled TAL Properties of Pomona, LLC v. Village of Pomona, Doris F. Ulman, Individually and as Attorney for the Village of Pomona, Brett Yagel, Individually and as Mayor of the Village of Pomona, Leon Harris, Individually and as Deputy Mayor of the Village of Pomona, Ian Banks, As Trustee of the Village of Pomona, Alma Sanders Roman, as Trustee of the Village of Pomona, Nicholas Wilson, as Trustee of the Village of Pomona, Louis Zummo, As Building Inspector of the Village of Pomona, and P. Joseph Corless, and bears Index Number 031215/2017.

2. This is a civil action seeking damages arising out of the renovation of a property located at 22 High Mountain Road, in the Village of Pomona, County of Rockland and State of New York. More specifically, the summons and complaint alleges various causes of action, including a claim pursuant to 42 U.S.C. 1983.¹ The summons and complaint demands an amount which is to be determined by the trier of fact and punitive damages in excess of \$500,000.00 as well as fees and costs pursuant to 42 U.S.C §§ 1983 and 1988. Accordingly, the amount in controversy in this suit is in excess, exclusive of interest and costs, of \$75,000.

3. The defendants do not concede, and indeed reserve the right to contest, that service was properly made upon them. According to the plaintiff's affidavits of service, the summons and complaint in the above action was served against the defendants Village of Pomona, Doris F. Ulman, Individually and as Attorney for the Village of Pomona, Brett Yagel, Individually and as Mayor of the Village of Pomona, Leon Harris, Individually and as Deputy Mayor of the Village of Pomona, Ian Banks, As Trustee of the Village of Pomona, Alma Sanders

¹ Plaintiff's causes of action are as follows: (i) a claim of negligence against Doris F. Ulman, Brett Yagel, and Leon Harris in a sum to be determined by the trier of fact and punitive damages in the sum of \$500,000; (ii) a claim of negligence against the Village of Pomona, Ian Banks, Alma Sanders Roman, Nichols Wilson, and Louis Zummo in a sum to be determined by the trier of fact; (iii) against all defendants pursuant to 42 U.S.C. 1983; and

(continued . . .)

Roman, as Trustee of the Village of Pomona, Nicholas Wilson, as Trustee of the Village of Pomona, and Louis Zummo, As Building Inspector of the Village of Pomona, on March 20, 2017. According to the affidavits of service, service of the summons and complaint in the above action was completed against the defendant P. Joseph Corless on April 1, 2017, which was 10 days after the initiation of the leave-and-mail service on March 22, 2017 under New York Civil Practice Law and Rules § 308(4). By stipulation, the defendants' time to answer, move, or appear was extended until April 26, 2017. Therefore, this Notice of Removal is filed within the time limits set forth in 28 U.S.C. § 1446(b)(1) and also in accordance with 28 U.S.C. § 1446(b)(2)(C).

4. No proceedings have occurred in the state court action, and the defendants have not yet appeared in that action.

5. Said action is one of which the District Courts of the United States have original jurisdiction under 28 USC § 1331. Removal to the District Court is authorized and requested herein pursuant to 28 USC §§ 1446(b)(1) and 1446(b)(2)(C).

6. Defendants are the petitioners for the removal of this case to this Court.

7. As counsel for all defendants, the undersigned represents that all defendants consent to the removal of plaintiff's summons and complaint to federal court.

8. Attached please find the following exhibits:

- a. **EXHIBIT A** – Summons & Complaint
- b. **EXHIBIT B** – Affidavits of Service
- c. **EXHIBIT C** – Stipulation Extending Time to Answer or Move.

(... continued)

(iv) a claim that the defendants acted in concert in violation of State Laws (without specificity) in the issuance of permits.

9. Written filing of this motion will be given to the plaintiff promptly after the filing of this motion, as is required by law.

10. A true and correct copy of this motion will be filed with the Clerk of the Supreme Court of the State of New York, Rockland County promptly after the filing of this motion, as is required by law.

11. Attached to this motion, and by reference made a part hereof, are true and correct copies of all process, pleadings and orders filed in the aforesaid action.

12. By filing this Notice of Removal, petitioners do not waive any defense which may be available to them, specifically including, but not limited to, their right to contest in personam jurisdiction over the petitioners, improper service of process upon the petitioners, and the absence of venue in this Court or in the court from which the action has been removed.

WHEREFORE, petitioners pray that this action proceed in this Court as an action properly removed thereto.

Dated: White Plains, New York
April 21, 2017

Yours etc.,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By:



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